

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. _____

UNITED STATES OF AMERICA, and
THE STATE OF COLORADO

Plaintiffs,

v.

STANDARD METALS CORPORATION,

Defendant.

COMPLAINT

Plaintiffs, the United States of America ("United States"), by authority of the United States Attorney General and through its undersigned attorneys, acting on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), the Chief of the United States Department of Agriculture Forest Service ("Forest Service"), and the Secretary of the Department of the Interior ("Interior"), and the State of Colorado ("State"), through its undersigned attorney, acting on behalf of the Executive Director of the Colorado Department of Public Health and Environment, the Director of the Colorado Department of Natural Resources' Division of Minerals and Geology, and the Attorney General of the State of Colorado (collectively "State Natural Resource Trustees"), file this complaint and allege as follows:

NATURE OF THE ACTION

1. This is a civil action pursuant to Sections 107(a) and 113(g)(1) and (2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. §§ 9607(a) and 9613(g)(1) and (2), and 28 U.S.C. § 2201, for: (i) the recovery of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Standard Mine Site in Gunnison County, Colorado (the "Standard Mine Site"), the Ross Adams Site on Prince of Wales Island, Alaska, six sites in San Juan County, Colorado (the "Silverton Sites"), and the Antler Mine and Mill Site in Mohave County, Arizona (the "Antler Site") (collectively, the "Sites"); (ii) the recovery of damages for injury to, destruction of, or loss of natural resources at the Sites and surrounding riparian corridors, including the reasonable costs of assessing such injury, destruction or loss; and (iii) a declaratory judgment on liability for response costs that will be binding on any subsequent action or actions to recover further response costs.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and the parties hereto pursuant to CERCLA Sections 107(a) and 113(b), 42 U.S.C. §§ 9607(a) and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this District pursuant to CERCLA Section 113(b), 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1391(b) and (c) because the releases or threatened releases of hazardous substances giving rise to some of the claims occurred in this District and some of the Sites are located in this District.

4. Defendant is subject to the personal jurisdiction of this Court due to its substantial

contacts with the State of Colorado, including but not limited to its significant activities related to and involvement with the Sites described herein.

DEFENDANT

5. Defendant Standard Metals Corporation is a corporation that was incorporated in Delaware in 1954 under the name Standard Uranium Corporation, and that changed its name to Standard Metals Corporation in 1960.

6. Defendant is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

7. Defendant is an "owner or operator" of the Sites within the meaning of Section 101(20) of CERCLA, 42 U.S.C. § 9601(20).

GENERAL ALLEGATIONS

The Standard Mine Site

8. The Standard Mine Site is located approximately 30 miles northwest of Gunnison and ten miles west of Crested Butte in Gunnison County, Colorado, in the Ruby Range of the Gunnison National Forest, and encompasses approximately ten acres of land that have been disturbed by past mining activities.

9. The Standard Mine Site includes adits and shafts that access approximately 8,400 feet of open mine workings on six operating levels, waste rock and tailings piles, concrete footings and stem walls, a tailings pond, and various mine-related structures, all of which are sources of ongoing hazardous substance releases.

10. Standard Metals holds title to six privately owned patented mining claims located within the Standard Mine Site. Also included within the Standard Mine Site are federal lands under the administration of the Forest Service.

11. Injuries to aquatic and terrestrial natural resources, as defined by CERCLA Section 101(16), have been identified at the Standard Mine Site and in the Elk Creek and Coal Creek corridors, and are ongoing.

12. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Standard Mine Site on the National Priorities List (set forth at 40 C.F.R. Part 300, Appendix B) by publication in the Federal Register on September 14, 2005.

The Ross Adams Site

13. The Ross Adams Site is an abandoned uranium mine located approximately 38 miles southwest of Ketchikan, Alaska, in the Tongass National Forest.

14. Standard Metals was involved in operating the mine from 1972 until 1984.

15. The Ross Adams Site includes underground mine workings, waste rock piles, and contaminated soils, all of which are sources of ongoing hazardous substance releases.

The Silverton Sites

16. The Silverton Sites consist of the American Tunnel, the Mayflower Mill, the Mogul Mine, the Grand Mogul Mine, the Arrastra Gulch Dump, and the Sunnyside Mine - all mining-related sites in the Animas River and Cement Creek watersheds near Silverton, Colorado.

17. The American Tunnel consists of an adit that accesses a vast complex of underground mine workings and an associated waste rock pile, all of which are sources of

ongoing hazardous substance releases. The American Tunnel covers approximately two acres and is located primarily on public land under the administration of Interior.

18. The Mayflower Mill consists of structures and tailings piles covering approximately 132 acres of mixed private land and public land under the administration of Interior, all of which are sources of ongoing hazardous substance releases.

19. The Mogul Mine and Grand Mogul Mine consist of several adits and waste rock piles on a mixture of patented mining claims formerly leased by Standard Metals and public land under the administration of Interior, all of which are sources of ongoing hazardous substance releases.

20. The Arrastra Gulch dump site consists of public land under the administration of Interior which was used for the unauthorized disposal of mining-related materials and hazardous substances.

21. The Sunnyside Mine is located in the Animas River watershed northeast of Silverton, Colorado in San Juan County, Colorado. Injuries to aquatic and terrestrial natural resources, as defined by CERCLA Section 101(16), have been identified at the Silverton Sites and in the Cement Creek and Animas River corridors and are ongoing.

The Antler Site

22. The Antler Site is located in Mohave County, Arizona, and covers approximately 21 acres of mixed patented mining claims formerly owned by Standard Metals and public land under the administration of Interior.

23. The Antler Site consists of adits, structures, and waste and tailings piles, all of which are sources of ongoing hazardous substance releases.

24. Injuries to terrestrial natural resources, as defined by CERCLA Section 101(16), have been identified at the Antler Site and are ongoing.

CERCLA Liability

25. CERCLA defines “facility” to include, inter alia, “any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.” 42 U.S.C. § 9601(9). Each Site is a “facility” within the meaning of 42 U.S.C. § 9601(9).

26. CERCLA defines “person” to include, inter alia, “individual” and “municipality.” 42 U.S.C. § 9601(21).

27. Defendant is a “person” within the meaning of 42 U.S.C. § 9601(21).

28. CERCLA establishes liability for various types of “covered persons,” including “the owner and operator of a vessel or a facility [from which there is a release or threatened release],” 42 U.S.C. § 9607(a)(1), and “any person who at the time of disposal of any hazardous substance owned or operated any facility [from which there has been a release or threat of release] at which such hazardous substances were disposed of.” 42 U.S.C. § 9607(a)(2).

29. There have been releases or threatened releases of hazardous substances into the environment at each Site within the meaning of Sections 101(8), (14) & (22) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(8), (14) and (22) and 9607(a).

30. Defendant is a “covered person” pursuant to 42 U.S.C. § 9607(a)(1) and 9607(a)(2).

31. During the time period that Defendant was the owner and/or operator at each Site, hazardous substances, were “disposed” of within the meaning of Section 101(29) of CERCLA,

42 U.S.C. § 9601(29).

32. Section 107(a) of CERCLA provides that “covered persons” are liable for “all costs of removal ... incurred by the United States Government or a State ... not inconsistent with the national contingency plan.” 42 U.S.C § 9607(a)(4)(A).

33. As a result of the release or threatened release of hazardous substances at the Sites, Plaintiffs have taken or will take “response” actions at the Sites within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), and have or will thereby incur costs.

34. Section 107(a) of CERCLA also provides that “covered persons” are liable for “damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release.” 42 U.S.C § 9607(a)(4)(C).

35. As a result of the release or threatened release of hazardous substances at the Sites, there have been and continue to be injuries to, destruction of, or loss of natural resources, and Plaintiffs have incurred and will continue to incur costs assessing such injury, destruction, or loss. The United States’ and State’s Natural Resource Trustees will work to restore or replace the natural resources injured, lost, or destroyed as a result of the Sites.

36. Section 25-16-103 of the Colorado Revised Statutes authorizes the State’s Department of Public Health and Environment to participate in the federal government’s implementation of CERCLA and the selection and performance of responses and remedial actions.

37. Pursuant to Sections 101(32) and 107(a) of CERCLA, Defendant is jointly and severally liable to Plaintiffs for all costs of response, as well as for damages to natural resources.

42 U.S.C. §§ 9601(32) and 9607(a).

FIRST CLAIM FOR RELIEF: RESPONSE COSTS

38. The allegations contained in the preceding paragraphs are re-alleged and incorporated herein by reference.

39. Plaintiffs have incurred response costs, as defined in CERCLA Section 101(25), 42 U.S.C. § 9601(25), and authorized by CERCLA Section 104, 42 U.S.C. § 9604, as a result of the release or threatened release of hazardous substances at the Sites.

40. Plaintiffs' response costs in connection with the Sites were incurred in a manner not inconsistent with the National Contingency Plan, promulgated under CERCLA Section 105(a), 42 U.S.C. § 9605(a), and codified at 40 C.F.R. Part 300.

41. To date, Defendant has failed to reimburse Plaintiffs for any of the response costs incurred in connection with the Sites.

42. Defendant is jointly and severally liable for response costs incurred by the United States and the State at the Sites, pursuant to CERCLA Sections 101(32) and 107(a), 42 U.S.C. §§ 9601(32) and 9607(a).

SECOND CLAIM FOR RELIEF: NATURAL RESOURCE DAMAGES

43. The allegations contained in the preceding paragraphs are re-alleged and incorporated herein by reference.

44. The releases of hazardous substances from the Sites have caused injury to, destruction of, or loss of aquatic and terrestrial natural resources as defined in 42 U.S.C. §

9601(16), which natural resources belong to, are managed by, appertain to, or are otherwise controlled by the United States and the State.

45. Defendant is jointly and severally liable under Sections 101(32) and 107(a)(4)(C) of CERCLA, 42 U.S.C. §§ 9601(32) and 9607(a)(4)(C), for damages for injuries to, destruction of or loss of natural resources belonging to, managed by, controlled by, or appertaining to the United States and the State, including the costs of assessing such injury, destruction or loss of natural resources.

PRAYER FOR RELIEF

WHEREFORE, the United States and State request that this Court enter Judgment in favor of the United States and the State, and against Defendant, jointly and severally:

1. Awarding the United States and the State reimbursement of all costs incurred and paid by the United States and the State in responding to releases or threatened releases of hazardous substances at the Sites, plus the costs of investigation, cost recovery and enforcement related to such releases and this suit, plus prejudgment interest;
2. Awarding the United States and the State damages for the injury to, destruction of, or loss of natural resources and loss of use of such resources, including the reasonable costs of assessing such injury, destruction, loss, or loss of use resulting from such a release;
3. Declaring the Defendant's liability, pursuant to Sections 113(g)(1) and (2) of CERCLA, 42 U.S.C. §§ 9613(g)(1) and (2), for response costs that will be binding on any subsequent action or actions to recover further response costs in connection with the Sites; and

4. Awarding the United States and the State such other and further relief as the Court may deem just and proper.

Dated this 16th day of December, 2008.

Respectfully submitted,

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